

2007 MAR 26 PM 12:41:22 -0700

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF OREGON

12 UNITED STATES OF AMERICA, )  
13 Plaintiff, ) Cr. 07-147-(1) KI  
14 v. )  
15 JAMES STEPHEN ROLEN, ) FINDINGS AND ORDER ON  
16 Defendant. ) DEFENDANT'S OBJECTION TO  
EX PARTE MOTION TO UNSEAL

17 HUBEL, Magistrate Judge.

19 Frank Noonan  
20 Assistant United States Attorney  
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21 Portland, Oregon 97204-2902  
Attorney for the United States

22 Patrick J. Ehlers  
23 Assistant Federal Public Defender  
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24 Portland, Oregon 97204  
Attorney for the Defendant

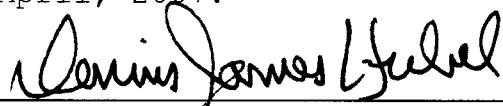
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26 This matter came before the court for oral argument on April  
27 26, 2007, on Defendant's Objection to Ex Parte Motion to Unseal.  
28 I make the following findings:

1       The case of Oregonian Publishing Company v United States  
2 Court - District of Oregon, 920 F.2d 1462 (9<sup>th</sup> Cir. 1990) governs  
3 the issues before me. The First Amendment requires not only an  
4 openness of the courtroom, but openness of court files as well.  
5 The defendant seeks an order that a due process violation has  
6 occurred with respect to him in that the court granted an ex  
7 parte motion to unseal the indictment filed by the government  
8 after the court had allowed the indictment to be sealed on filing  
9 to prevent flight of the defendants before arrest, and for  
10 officer safety in making the arrests of the defendants. This  
11 case requires a defendant seeking to seal all or a portion of a  
12 public case file to make a showing that: 1) there is a  
13 substantial probability of irreparable harm to defendant's right  
14 to a fair trial by allowing access to the criminal file by the  
15 public or the press; 2) that there are no alternative means for  
16 assuring the availability of a fair trial to the defendant, and  
17 3) that sealing of all or a portion of the court file will  
18 protect the defendant's right to a fair trial. The defendant  
19 argues that he may also make a showing that there are substantial  
20 safety concerns of the defendant's that require a criminal file  
21 to be closed. After a hearing today, at which the defendant was  
22 represented by counsel, I find that no such showing regarding the  
23 defendant's safety, nor the defendant's right to a fair trial has  
24 been made, and I ORDER that the file be unsealed. I specifically  
25 decline to find any due process violation has occurred.

26       If either the government or the defendant desire to have  
27 these findings reviewed by the Judge King, they should make that  
28 request in writing not later than 4:30 P.M. today. If such a

1 filing is made in writing, I will continue the partial sealing  
2 order I entered yesterday until such time as Judge King can  
3 consider the request to review my findings. If no such filing is  
4 made, the Clerk's office is to unseal the file by 5:30 P.M.  
5 today. In either event, the Clerk is directed to provide a  
6 copy of this order with defendant's name redacted to any member  
7 of the public or the press requesting information about this  
8 case.

9 DATED this 26<sup>th</sup> day of April, 2007.



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11 Dennis J. Hubel  
12 United States Magistrate Judge  
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